

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-185000

DATE: May 27, 1976

MATTER OF: Boston Pneumatics, Inc.

DIGEST:

1. Use of compatibility and interchangeability requirement for riveters is upheld where GSA has determined that it is essential because riveters are to be used with equipment currently existing in military supply system.
2. Determination of Government's requirements and drafting of specifications to meet requirements are responsibilities vested in procurement activity and use of bid samples is authorized by FPR and has been sanctioned by GAO in instances where it is determined that specifications are not sufficiently definite to allow determination without samples that item offered will meet Government's minimum needs.

Boston Pneumatics, Inc. (BPI), protested certain aspects of invitations for bids (IFB) Nos. FPWP-B6-14788-A-10-16-75 and FPWP-B6-14854-A-10-6-75 issued by the General Services Administration (GSA) for pneumatic tools.

GSA subsequently advised in the agency report on the protest that it withdrew from the IFB's the riveter items against which BPI protested and that new solicitations would be issued for the withdrawn items. Thereafter, BPI withdrew the specific complaints against the product descriptions pending review of the new solicitations. However, BPI has continued its protest against any GSA compatibility and interchangeability requirement for the riveters and against the bid sample requirement in the IFB's. Bid opening on both IFB's has been postponed pending our decision.

BPI objects to a compatibility and interchangeability requirement largely on the basis that it is expensive, difficult and sometimes impossible to reverse engineer the product upon which the compatibility and interchangeability is to be based. Further, with respect to the immediate riveters, it states that the requirement restricts competition, innovation and betterment of design. However, GSA has stated

B-185000

that a requirement is essential because the riveters are to be used with equipment currently existing in the military supply system. Our Office has upheld the use of a compatibility and interchangeability requirement for riveters where GSA determined that interchangeability was necessary to provide continuous logistic support. See B-178656, December 26, 1973 (BPI protest); and Boston Pneumatics, Inc., B-180798, November 14, 1974, 74-2 CPD 260.

BPI objects to the burden placed on small business by the GSA requirement that each bidder supply two samples with the bid. BPI also objects to the GSA sample testing procedure. BPI believes that it should be permitted to have a representative present at the sample testing. Alternatively, BPI believes it should be allowed to use an outside laboratory for the sample testing at its expense. BPI recognizes that the GSA position has been that testing of preaward samples is unobjectionable if the testing is fair and conscientious. However, BPI states that a bidder has no assurance that the testing will be conducted that way and, from its experience, it is not. Further, referring to resolution of postaward contract disputes before contract appeals boards, BPI contends that preproduction testing under the contract should replace the bid sample testing under the IFB because this would allow a hearing on any alleged defects.

Although BPI objects to the requirement for bid samples for the reasons noted, the fact remains that the determination of the Government's requirements and the drafting of specifications to meet those requirements are responsibilities vested in the procuring activity and the use of bid samples is authorized by Federal Procurement Regulations § 1-2.202-4 (1964 ed. amend. 10) and has been sanctioned by our Office in those instances where it is determined that the specifications are not sufficiently definite to allow a determination without samples that an item offered will meet the Government's minimum needs. B-166092, April 4, 1969; B-166648, July 10, 1969; 51 Comp. Gen. 583 (1972); Boston Pneumatics, Inc., supra. Further, the fact that bidder's representatives are not permitted to be present during the testing of samples does not render the testing procedures unfair or prejudicial. Boston Pneumatics, Inc., B-181760, November 15, 1974, 74-2 CPD 265; B-178656, supra. Moreover, bidders are provided an opportunity to air their grievances against the evaluation of the samples submitted for particular procurements under the Bid Protest Procedures, 40 Fed. Reg. 17979 (1975). Therefore, BPI has not provided an adequate basis for our Office to object to the continuance of the bid sample requirement.

B-185000

Accordingly, the BPI protest is denied.

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Deputy Comptroller General
of the United States